NOTES OF CASES.

Bailments—Failure to Answer Letters Not Creating Express Contract.—In Bowley *v.* Fuller, 115 Atl. 466, the Supreme Judicial Court of Maine held that where defendant left hay stored in the barn on premises of which plaintiff became lessee, without any agreement as to the price for storage, and plaintiff subsequently wrote defendant that unless the hay was removed specified prices would be charged for storage, defendant's failure to reply was not an acceptance of such price as a matter of law so as to create a contract, as a mere failure to object cannot be converted into an acceptance unless the offeree has previously so agreed, and the failure to remove the hay could be referred to the subsisting implied contract.

The court said in part: "In our opinion it cannot be said as a matter of law that an express contract was completed. Plaintiff's letters constituted nothing more than an offer communicated to the defendant. In order to perfect the contract and bind the defendant there must have been an acceptance by him. But he neither accepted nor rejected the offer. He did nothing which could be construed into an acceptance. He simply remained silent. He was under no obligation to speak or to act, and under those circumstances silence and inaction cannot be converted into acceptance.

"The amount of storage to be paid rested entirely in contract. When the letters were written there was a subsisting implied contract which obligated the defendant to pay a reasonable sum. There was no existing obligation on the defendant to pay the increased demand, and it could not be inferred as a matter of law from merely allowing the hay to remain in the barn because the continuing liability for rent could be referred to that subsisting contract, and in the absence of any new contract, would be referred to it. Raysor *v.* Berkeley Co. Ry. & L. Co., 26 S C. 610, 2 S. E. 119. A mere failure to reject cannot be converted into an acceptance unless the offeree has agreed in advance that such silence should be so construed or there was some legal duty resting upon him to that effect. There was no such preliminary agreement here and no such duty. Even if the plaintiff had attempted in his offer to make silence on defendant's part a constructive acceptance, the law would not permit it. The governing principles are summarized as follows:

" 'Acceptance of an offer may often be inferred from silence as when goods sent to another without request are used or dealt with as his own. Silence alone does not give consent, even by estoppel, for there must not only be the right but the duty to speak before the failure so to do can estop a person from afterward setting up the truth. It is otherwise of course if the relation of the parties, their previous dealings or other circumstances are such as to impose a duty to speak. An offer made to another, either orally or in writing, cannot be turned into an agreement because the person to whom it is

made or sent makes no reply, even though the offer states that silence will be taken as consent for the offerer cannot prescribe conditions of rejection so as to turn silence on the part of the offeree into acceptance.' 13 C. J., p. 276, sec. 74.

"Another author states the rule thus:

" 'A party cannot by his wording of his offer turn the absence of communication of acceptance into an acceptance and compel the recipient of his offer to refuse at the peril of being held to have accepted it.' Clark on Contracts, secs. 31, 32.

"Page on Contracts, sec. 42, says:

" 'Failure or omission to reject an offer is not the equivalent of an acceptance. . . . Even if the party making the offer prescribes that a failure to answer should be regarded as an acceptance such failure does not amount to an acceptance. The party to whom the offer is made may however have agreed that his silence shall be equivalent to an acceptance and this agreement may be understood from the conduct of the parties.'

"This doctrine has been recognized and applied in a wide range of cases. Illustration may be found in Felthouse *v.* Brindley, 11 C. B. N. S., 869; In re Empire Assoc. Corp., L. R., 6 Ch., 266; Prescott *v.* Jones, 69 N. H. 305, 41 Atl. 352; More *v.* Ins. Co. 130 N. Y. 537, 547, 29 N. E. 757; Raysor *v.* Berkeley Co. Ry. & L. Co., 26 S. C. 610, 2 S. E. 119; Royal Ins. Co. *v.* Beatty, 119 Pa. 6, 12 Atl. 607, 4 Am. St. Rep. 622; Cincinnati Equipment Co. *v.* Coal Co., 158 Ky. 247, 164 S. W. 794. Of course, the conduct of the offeree may be of such a character that although he remains silent his acts import acceptance or assent and therefore in the eye of the law may be regarded as such, as in Beverly *v.* Lincoln G. L. Co., 6 Adol. & E. 829; Orme *v.* Cooper, 1 Ind. App. 449, 27 N. E. 655; Hobbs *v.* Massasoit Whip Co., 158 Mass. 194, 33 N. E, 495; Bohn Mfg. Co. *v.* Sawyer, 169 Mass. 477, 48 N. E. 620. In this class of cases the question of acceptance inferable from conduct would be one of fact for the jury."

Bills and Notes—Body of Note Controls Marginal Notation.—In Fales *v.* Wilson, 116 Atl. 268, the Supreme Judicial Court of Maine held that the body of a note containing no promise to pay interest controls over the words "and interest" following the figures $100 above the writing, and not shown to be a part of the note and included in the actual agreement of the parties.

The court said in part: "The marginal memorandum contradicts the note; contradicts the signed promise to pay. Which shall govern, the deliberate, signed promise to pay, or a memorandum which may have been made by a person not a party to the note? It is the opinion of the court that the note should govern, and not a marginal memorandum or notation, which is not shown to be a part of the note, and included in the actual agreement between the parties. In other words, the note, once made, cannot be altered without the consent of